

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION**

KENNETH WAYNE WHITSON,)
Petitioner,)
v.) Case No. 3:23-cv-1148-AMM-SGC
STATE OF ALABAMA,)
Respondent.)

MEMORANDUM OPINION

On October 11, 2023, the magistrate judge recommended this action be dismissed without prejudice for failure to prosecute because the petitioner, Kenneth Wayne Whitson, failed to respond to the court's order requiring him to file an amended petition and either pay the filing fee or apply to proceed *in forma pauperis*. Doc. 4. Mr. Whitson was advised of his right to file written objections within fourteen days, but the court has not received any objections or other response from Mr. Whitson.

In addition, on October 24, 2023, the United States Postal Service returned the Report and Recommendation as undeliverable with the following notations: “Return to sender,” “No such person here or been released from our facility,” “Not deliverable as addressed,” and “Unable to forward.” Doc. 5. When he filed his petition, the Clerk notified Mr. Whitson that he must keep the court advised of his

current mailing address and that his failure to keep a current address on file with the Clerk's Office might result in the dismissal of his case. Doc. 2. Mr. Whitson has not maintained a current mailing address with the court, the court has no way to communicate with him, and the record reflects no attempt by Mr. Whitson to continue prosecuting this action.

After careful consideration of the record in this case and the magistrate judge's report, the court **ADOPTS** the report and **ACCEPTS** the recommendation. Doc. 4. Consistent with that recommendation, Mr. Whitson's petition will be dismissed without prejudice because he has failed to prosecute his claims. *See* Fed. R. Civ. P. 41(b).

DONE and **ORDERED** this 6th day of November, 2023.



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE